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**BETHEL & COMPANY V. SALEM IMPROVEMENT COMPANY.**—Decided at Wytheville, July 9, 1896. *Keith, P. Absent, Harrison, J:*

1. **CONTRACTS**—*Failure of plaintiff to perform—Prospective profits—Measure of damages for failure to pay money.* In an action to recover for the price of bricks manufactured under contract, and also to recover prospective profits on other bricks contracted to be manufactured, but which the plaintiff was unable to manufacture by reason of the failure of the defendant to pay for those already manufactured, the plaintiff can only recover for the bricks already manufactured the contract price thereof, with legal interest from time payment should have been made. Not having performed his contract, he cannot recover prospective profits on the bricks not manufactured. The measure of damages for the breach of a contract to pay money is, with a few exceptions, the principal sum, with legal interest thereon from the time the payment was due.

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**SIMMONS V. PALMER AND OTHERS.**—Decided at Wytheville, July 9, 1896.—*Keith, P. Absent, Harrison, J:*

1. **RESCISSION**—*Diligence—Case at bar.* Application to rescind a contract on the ground of mistake should be made with due diligence, and what constitutes due diligence must be determined by the facts of the particular case. The diligence must be in proportion to the injury likely to ensue from delay. In the case in judgment, though the complainant negotiated for the purchase of lot 5 in section 16, and there was conveyed to him lot 5 in section 15, and he promptly called attention to the mistake and demanded a return of his money and bonds, yet he was perfectly familiar with the land and its division in lots and sections, and must have known of the mistake at the time. The lots were bought for speculation, and it does not appear that they were of unequal value, or that the location of the lot was the inducing motive to the purchase. The complainant kept the deed and never offered to reconvey the lot until the lots had greatly depreciated in value. These and the other attending facts and circumstances present a case in which the complainant has not been diligent, and is not entitled to relief by the rescission of his contract.

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**ANDERSON V. PHLEGAR, TRUSTEE, AND OTHERS.**—Decided at Wytheville, July 16, 1896.—*Cardwell, J. Absent, Harrison, J:*

1. **ESTOPPEL**—*Recital in deed—Representations.* A grantor in a deed, releasing an existing lien on land in favor of a debt to be secured by a deed of trust thereon, who recites in his deed of release that his mother has become the purchaser of a life estate in the land, and that he has acquired a lien on such life estate by virtue of having paid a part of the purchase money therefor as surety for his mother, is estopped by the recital of his deed from asserting, as against the trust creditor, that he, and not his mother, was the purchaser of said life estate. It is immaterial that the records would show who the purchaser was. Having represented that his mother was the purchaser, and his representations having been acted on by the trust creditor, it must be taken as true.

2. **INJUNCTIONS**—*Dissolution—Discretion as to retaining case.* Upon the dissolution of an injunction to a sale under a deed of trust, it is within the discretion of